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IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE TWENTY SEVENTH DAY OF JANUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE N.V. RAMANA

WRIT PETITION NO : 22267 of 2004

Between:

- 1 P. Vaikunta Pathy, S/o. Rangaiah,
R/O. PLOT NO.25 AND 26, Sultanabad Village and Mandal,
Karimnagar District.
- 2 K. Komuraiah, S/o. Ramaiah,
R/o. Plot No.76 Sultanabad Village and Mandal,
Karimnagar District.
- 3 V. Bhomaiah, S/o. Venkataiah,
R/o. Plot No.86 Sultanabad Village and Mandal,
Karimnagar District.
- 4 Vadloori Bhoomaiah, S/o. Hanmanthu,
R/o. Plot No.93 Sultanabad Village and Mandal,
Karimnagar District.
- 5 Kurna Raj Kumar, S/o. Jakkaiah,
R/o. Plot No.95 Sultanabad Village and Mandal,
Karimnagar District.
- 6 Valusa Madhusudhan, S/o. Rajaveeru,
R/o. Plot No.84 Sultanabad Village and Mandal,
Karimnagar District.
- 7 Tatipamula Chandra Mouli, S/o. Lasumaiah,
R/o. Plot No.24 Sultanabad Village and Mandal,
Karimnagar District.
- 8 Valusa Veeresham, S/o. Sayanna,
R/o. Plot No.80 Sultanabad Village and Mandal,
Karimnagar District.
- 9 A. Rangaiah, S/o. Ramaiah,
R/o. Plot No.78 Sultanabad Village and Mandal,
Karimnagar District.
- 10 Katla Rajamouli, S/o. Chandraiah,
R/o. Plot No.81 Sultanabad Village and Mandal,
Karimnagar District.
- 11 B. Shankaraiah, S/o. Gouraiah,

- R/o. Plot No.89 Sultanabad Village and Mandal,
Karimnagar District.
- 12 G. Sathaiah, S/o. Guruvaiah,
R/o. Plot No.85 Sultanabad Village and Mandal,
Karimnagar District.
- 13 G. Durgesh, S/o. Guruvaiah,
R/o. Plot No.82 Sultanabad Village and Mandal,
Karimnagar District.
- 14 Nagishetti Kanakaiah, S/o. Durgaiah,
R/o. Plot No.90 Sultanabad Village and Mandal,
Karimnagar District.
- 15 Purella Laxminarayana, S/o. Mallaiah,
R/o. Plot No.87 Sultanabad Village and Mandal,
Karimnagar District.
- 16 K. Sathayanarayana, S/o. Jakkaiah,
R/o. Plot No.95 Sultanabad Village and Mandal,
Karimnagar District.
- 17 M.A. Gani, S/o. Shaik Mohammed,
R/o. Plot No.29 Sultanabad Village and Mandal,
Karimnagar District.
- 18 Bommu Kanakaiah, S/o. Rajalingu,
R/o. Plot No.79 Sultanabad Village and Mandal,
Karimnagar District.
- 19 Gudla Guruvaiah, S/o. Laxmaiah,
Sultanabad Village and Mandal,
Karimnagar District.

..... PETITIONER(S)

AND

- 1 The District Collector, Karimnagar District, Karimnagar.
- 2 The District Panchayat Officer, Karimnagar District, Karimnagar.
- 3 Gram Panchayat, Sultanabad, Rep. by its Sarpanch,
Sultanabad Village and Mandal, Karimnagar District.

.....RESPONDENT(S)

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court may be pleased to issue a direction, writ or order, particularly, one in the nature of Mandamus: a) Declaring the action of the respondents in not considering the request of the petitioners for alienating the piece of land situated at Old Bus Stand, Sultanabad Village and Mandal, Karimnagar District bearing Plots.25,26,76,86,93,95,84,24,80,78,81,89,85,82,90,87,95,29,79 on which they are in occupation since more than 35 years as done in the case of such other similarly placed candidates in the year 1990 and 1991 is discriminatory b) and a direction may be issued to the respondents to consider the petitioner's request for alienation in respect of piece of land in which they are in occupation c) and to declare the action of the respondents in not issuing prior notice before evicting the petitioners is against the principles of natural justice.

Counsel for the Petitioners: MR.M.RAMA RAO

Counsel for the Respondent Nos.1 and 2: GP FOR PANCHAYAT RAJ & RURAL DEV.

Counsel for the Respondent No.3: Mr. Y. Rama Rao.

The Court made the following :

THE HON'BLE SRI JUSTICE N.V. RAMANA

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W.P. No. 22267 of 2004

Order:

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Heard the learned counsel for the petitioners and the learned Government Pleader for Panchayat Raj for respondent Nos. 1 and 2 and the Standing Counsel for respondent No.3-Gram Panchayat.

The learned counsel for the petitioners submits that the petitioners, who are 19 in number, along with some other persons, occupied small pieces of land belonging to the Government, and by erecting sheds thereon, are carrying on petty businesses for the last more than 35 years in Rajiv Market, Old Bus Stand, Sultanabad Village and Mandal, Karimnagar District, and the Gram Panchayat, having issued Occupation Certificates to the petitioners, is also collecting lease amount from them. While so, the petitioners made representations to the Gram Panchayat on 13-7-2001 and 30-11-2004 to alienate the lands in their occupation in their favour, and expressed their readiness and willingness to purchase the same, but the Sarpanch of the Gram Panchayat, who is inimical towards the petitioners, without considering their representations in accordance with G.O. Ms. No. 515, dated

19-4-2003 and G.O. Ms. No. 631, dated 23-8-2004, got passed a resolution by the Gram Panchayat to evict them on the plea that the Gram Panchayat itself would construct a Shopping Complex. The learned counsel for the petitioners submits that even though there is no necessity to construct a Shopping Complex and even though the businesses carried on by them are not an hindrance to free flow of traffic and general public, yet the Gram Panchayat passed a resolution to construct the Shopping Complex, however, the Gram Panchayat has not passed any resolution to allot the shops in the Shopping Complex to the petitioners after the construction is

over either on lease or on out right sale basis. The learned counsel further submits that on an earlier occasion, when about 34 similarly placed persons, made representations to the Gram Panchayat to alienate the land in their occupation in their favour, the Collector (Panchayat wing), Karimnagar, in two spells, vide his proceedings in Roc.No.A2/1016/90/Pts, dated 31-5-1990 and another proceedings in Roc.No.A2/1016/90/Pts, dated 10-4-1991, accorded permission alienating the land in their favour, and not granting similar permission to the petitioners, amounts to discriminating them. The learned counsel further submits that even if it is assumed that the petitioners have occupied the land belonging to the Gram Panchayat, yet the Gram Panchayat, can impose penalty, and can evict them only after issuing notices as provided under sub-section (2) of Section 103 and Section 131 of the A.P. Panchayat Raj Act (for short "the Act"), and inasmuch as no such notices have been issued, the action of the Gram Panchayat, in seeking to evict the petitioners from the small pieces of lands in their occupation, is illegal and arbitrary. He submits that unless and until the representations filed by them for alienation of the lands in their occupation in their favour are disposed of, the petitioners cannot be evicted.

Respondent No.3-Gram Panchayat filed counter. The learned Standing Counsel appearing on behalf of the Gram Panchayat, basing on the counter averments, submitted that the small pieces of lands occupied by the petitioners, in fact, belongs to the Gram Panchayat, and the petitioners have no vested or legal right to continue therein or seek alienation of the said lands in their favour. He denied the contention of the petitioners that the Gram Panchayat issued Occupation Certificates to the petitioners and that the petitioners are paying the lease amounts and taxes regularly. The learned Standing Counsel further submits that though during 1990-91, the District Collector accorded permission for alienation of the lands in their occupation in respect of some persons on payment of market value, but now the Gram Panchayat having passed a resolution on 11-11-2004 for construction of a Shopping Complex, and the District Collector also vide his proceedings dated 4-12-2004, having sanctioned funds for construction of Shopping Complex, the contention of the petitioners for alienation of the land in their occupation in their favour on payment of market value is untenable. In the meeting convened by the Gram Panchayat, all the vendors, including the petitioners, except petitioner No.1, had consented to the construction of Shopping Complex and also agreed to deposit Rs.40,000/- in two instalments to enable the Gram Panchayat for construction of Shopping Complex. The petitioners having consented for construction of Shopping

Complex and having agreed to deposit Rs.40,000/-, now cannot turn around and contend that there is no necessity for construction of Shopping Complex. Contending that there is necessity for construction of Shopping Complex, the learned Standing Counsel submitted that as there are no permanent structures in Rajiv Market, the vendors are selling vegetables and fruits on the ground without any protection from rain and sun, and as a result of strewn garbage and rotten vegetables and fruits, the area is getting unhygienic. He further contended that there is nothing on record to say that the District Collector or the District Panchayat Officer had recommended for alienation of the land in occupation of the petitioners in their favour. He further contended that upon construction of the Shopping Complex, the amount of Rs.40,000/- deposited by the vendors would be returned to them, and the shops would be leased out to them for a period of six years on monthly rentals of Rs.400/- and Rs.200/-, and if the petitioners are interested, they can well apply for the same, and this apart, pending construction of the Shopping Complex, the petitioners and other vendors are given alternative site for carrying on their businesses, nearer to the present market, and as such, the petitioners cannot have any grievance.

Respondent No.3-Gram Panchayat is a local self-government. Though the petitioners contend that the place and land in which they are carrying on petty businesses, belongs to the Government, and as such, the Gram Panchayat has no power whatsoever to dispossess therefrom, the same is disputed by the Gram Panchayat, stating that the land in occupation of petitioners being a government poramboke vests in the Gram Panchayat under Section 58 of the Act, and if any immovable property is required, the Gram Panchayat is empowered to acquire the same under Section 59 of the Act, and under Section 98 of the Act, the Gram Panchayat is also empowered to remove the encroachments made in the land belonging to them. Irrespective of the power of the Gram Panchayat to acquire immoveable property or remove the encroachments made in their lands, even assuming for a moment that the land in which the petitioners are carrying on petty businesses belongs to the Government, and the Gram Panchayat has no power whatsoever to evict the petitioners from the land in their occupation, the fact remains that the learned Government Pleader for Revenue appearing on behalf of respondent No.1-District Collectors submits that the Revenue Department has no

objection for construction of Shopping Complex by the Gram Panchayat by evicting the petitioners, and the fact that the Revenue Department has no objection to the construction of the Shopping Complex, is further evidenced by the fact that the District Collector vide his proceedings dated 4-12-2004 accorded permission for construction of Shopping Complex by the Gram Panchayat. In that view of the matter, no exception can be taken to the action of the Gram Panchayat in seeking to evict the petitioners from the land in their occupation, irrespective of whether it belongs to the Government or the Gram Panchayat, and more so when the petitioners are admittedly encroachers and have no title to their occupation.

Admittedly, the place, namely Rajiv Market, where the petitioners, are carrying on petty businesses, has no permanent structures, and due to this, the vendors are forced to carry on their business in unhygienic conditions, and in order to provide improved and quality civic amenities to citizens of the Gram Panchayat and to protect the vendors in particular from the vagaries of nature and to keep the stray animals at bay, the Gram Panchayat, convened a meeting on 11-11-2004, which was attended by all the vendors, who agreed for construction of a Shopping Complex to run their petty businesses. Though 19 persons filed this writ petition, the resolution passed in the meeting held on 11-11-2004 by the Gram Panchayat, and which is before the Court, would disclose that except petitioner No.1, all other petitioners' and other vendors, had appended their signatures to the resolution, and all of them agreed to deposit Rs.40,000/- for meeting the expenditure to be incurred for construction of Shopping Complex, and take the shops on monthly rents of Rs.400/- and Rs.200/- on or before 5th December, 2004. This belies the contention of the petitioners that they have never agreed to deposit Rs.40,000/- for meeting the expenditure towards construction of Shopping Complex. The petitioners having agreed to the construction of Shopping Complex by the Gram Panchayat, now cannot be allowed to turn around and say that they have never agreed to the construction of Shopping Complex, and more so when construction of Shopping Complex by the Gram Panchayat, is for the benefit of the general public and the vendors in particular. As the revenue earned by the Gram Panchayat was sufficient to meet the salaries of its staff and other maintenance expenses, leaving no monies for development, in the meeting, it was resolved to pool up funds for construction of Shopping Complex by seeking funds from the local M.L.A. and M.P. and the District Collector and also to collect Rs.40,000/- from each vendor, and the District Collector,

even responding to the request of the local M.L.A. and the Gram Panchayat positively, vide his proceedings dated 4-12-2004 accorded sanction for construction of Shopping Complex at an estimated cost of Rs.20.00 lakhs under SGRY (SC) programme, consisting of rice and cash components equally, and towards rice component, the District Collector, to the extent of Rs.10.00 lakhs, sanctioned 1250.00 quintals of rice, and directed to meet the cash component of Rs.10.00 lakhs from out of Gram Panchayat Funds. Further, the amount of Rs.40,000/- collected from each of the vendors, it is stated by the learned Standing Counsel that is merely a deposit, which is refundable. The resolution to construct Shopping Complex passed by the Gram Panchayat, being in the interest of the general public and the vendors in particular, no exception can be taken thereto.

Though the petitioners contend that unless the District Collector considers their representations and passes appropriate orders, they shall not be evicted from the lands in their occupation, the fact of the District Collector, vide his proceedings dated 4-12-2004, according sanction for construction of Shopping Complex, gives an indication that he is not in favour of alienating the land in favour of the petitioners, and therefore, the petitioners should presume that their representations were not considered favourably. Be that as it may, G.O. Ms. No. 515, dated 19-4-2003 and G.O. Ms. No. 631, dated 23-8-2003, on which the petitioners placed heavy reliance for considering their case for alienation of the lands in their occupation in their favour by the District Collector, would disclose that they are applicable only in respect of regularizing the encroachments made on the government lands by way of residential structures on payment of market value, and the petitioners, who are doing petty businesses by occupying the lands belonging to the Gram Panchayat, which is for a commercial activity, cannot be allowed to contend that their cases for alienation should be considered in terms of the aforesaid G.Os. by the District Collector, and until then they should not be evicted.

Further, it is not that as if the petitioners alone are being evicted from the lands in their occupation, along with the petitioners, other vendors are also being evicted, and as such, the petitioners should not have any grievance, and it is not as if the petitioners are not provided with alternative sites, as it is stated by the Gram Panchayat that they made temporary arrangements by providing the vendors alternative site at a place near to Rajiv Market till the completion of the Shopping Complex, and it further stated and was resolved in the meeting that once the

construction of Shopping Complex is complete, the shops in the Shopping Complex would be leased out. When such is the case, it is always open to the petitioners, who have been in occupations of lands in Rajiv Market, to apply for lease on monthly rentals of Rs.400/- or Rs.200/- as may be fixed by the Gram Panchayat, but certainly they cannot be allowed to question the action of the Gram Panchayat in resolving to construct Shopping Complex, which for their own benefit.

For the foregoing reasons, there is no merit in the writ petition, and the same is accordingly dismissed. No costs.

N.V. RAMANA, J.

Date: 27th January, 2005.

KSR

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// TRUE COPY //

SECTION OFFICER

To

- 1 The District Collector, Karimnagar District, Karimnagar.
- 2 The District Panchayat Officer, Karimnagar District, Karimnagar.
- 3 The Sarpanch, Gram Panchayat, Sultanabad,
Sultanabad Village and Mandal, Karimnagar District.
- 4 Two CCs to GP for Panchayat Raj and Rural Development, High Court
of AP, Hyderabad (OUT)
5. 2 CD copies

*Form-NIC-OGS/WP{**SPJS**}*